

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:10-1087

Judge John T. Copenhaver, Jr.

\$88,029.08, MORE OR LESS,
IN UNITED STATES CURRENCY,

Defendant.

And

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:11-0101

Judge John T. Copenhaver, Jr.

\$27,671.50, MORE OR LESS, IN
UNITED STATES CURRENCY,

Defendant.

(Katherine Anne Hoover, M.D. and
John F. Tomasic, interested parties;
no pending federal charges)

**REPLY IN SUPPORT OF THE
MOTION OF THE UNITED STATES OF AMERICA
TO COMPEL KATHERINE ANNE HOOVER, M.D.,
TO APPEAR FOR A DEPOSITION**

The response of Katherine A. Hoover, M.D., and John F. Tomasic to the United States' Motion To Compel Katherine A. Hoover, M.D., to appear for a deposition is solely based on their contention that the Court lacks subject matter jurisdiction to order Dr. Hoover's deposition

and to allow discovery in this civil forfeiture proceeding. This argument has been squarely rejected by this Court, and Judge Copenhaver has found their challenge based on an alleged lack of subject matter jurisdiction to be “meritless” and “inappropriate.” See Order entered on August 8, 2011, at p. 13n.2 (Docket No. 93).

Furthermore, federal courts have long recognized that depositions can be taken in civil forfeiture actions and that various remedies are available under Fed. R. Civ. P. 37 when a party refuses to participate in discovery. See United States v. Zucker, 161 U.S. 475 (1896); United States v. One 1987 BMW 325, 985 F.2d 655, 660 (1st Cir. 1992); United States v. One 1999 Forty Seven Foot Fountain Motor Vessel, 240 F.R.D. 695 (S.D. Fla. 2007); United States v. United States Currency In Amount of \$600,341.00, 240 F.R.D. 59 (E.D.N.Y. 2007).

Since Dr. Hoover has no legitimate basis to refuse to submit to a deposition in this civil forfeiture action, she is not entitled to refuse to participate in the discovery process, particularly to refuse to appear for a deposition. See United States v. Zucker, 161 U.S. 475 (1896); United States v. One 1987 BMW 325, 985 F.2d 655, 660 (1st Cir. 1992); United States v. One 1999 Forty Seven Foot Fountain Motor Vessel, 240 F.R.D. 695 (S.D. Fla. 2007); United States v. United States Currency In Amount of \$600,341.00, 240 F.R.D. 59 (E.D.N.Y. 2007).

Accordingly, the United States of America respectfully requests that the Court grant its motion to compel, as amended, order Dr. Hoover to appear for a deposition on August 30, 2011, that the scheduling order entered in this case be modified as previously requested due to Dr.

Hoover's failure to appear for her previously scheduled deposition, and that the United States be granted such other and further relief as the Court deems appropriate.

Respectfully submitted,

R. BOOTH GOODWIN II
United States Attorney

s/Fred B. Westfall, Jr.

WV State Bar No. 3992

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CERTIFICATE OF SERVICE

I electronically filed the foregoing “REPLY IN SUPPORT OF THE MOTION OF THE UNITED STATES OF AMERICA TO COMPEL KATHERINE ANNE HOOVER, M.D., TO APPEAR FOR A DEPOSITION” with the Clerk of Court using the CM/ECF system this 12th day of August, 2011, and I hereby certify that service was made this day, by Federal Express International to the following:

Katherine Anne Hoover, MD and John F. Tomasic
c/o Dr. Norman Gay
N-3222
247 West Bay Street
Nassau, N.P. Bahamas

s/ Fred B. Westfall, Jr.

Assistant United States Attorney